IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 695 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SULEMAN ALI MANEK, PRESIDENT,

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

MR YS MANKAD for Petitioner

M/S PURNANAND & CO for Respondent No. 1

NOTICE SERVED for Respondent No. 2

PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/08/2000

ORAL JUDGEMENT

Present Special Criminal Application has been filed by the petitioner against the judgment and order

dated 31-8-1984 passed by the learned Sessions Judge, Kutch at Bhuj in Criminal Revision Application No.89 of 1983 whereby he has confirmed the order dated 7-9-1983 passed by the learned Sub-Divisional Magistrate, Kutch in Criminal Case No.1 of 1983.

2. The facts in short are that the present petitioner who received an order under Sec.145 of the Code of Criminal Procedure dated 5-7-1983 passed by the authority along with notice for stopping the work of digging foundation for boundary of the Wakf property known as Lalshah Ni Masjid stating that the Superintendent, Archaeology was the owner of the property.

3. The petitioner filed reply in the Criminal Case No.1 of 1983 praying that notice be discharged. Ultimately, the said order has been confirmed against which, the petitioner has filed Criminal Revision Application No.89 of 1993 into the Court of Sessions Judge, Kutch at Bhuj.

4. After hearing the learned advocates appearing for the respective parties, learned Sessions Judge, Kutch at Bhuj rejected the said application vide order dated 31-8-1984. Being aggrieved by the said order, present Criminal Revision Application has been preferred.

5. I have heard learned advocates for the respective parties at length. I have also gone through the order passed by the lower Courts and it seems that all the orders which have been passed by the Courts below are based on assumption and presumption that the property in question is an ancient one and same has been vested with the Archaeological Department and Superintendent, Archaeological Department is the owner of the property in question. But prima-facie nothing is on record to come to any conclusion and whatever orders that have been passed by the Court below are based on assumption and presumption and, therefore, orders require interference and matter is required to be sent back from where the initial proceedings have begun and all the orders which have been passed by the Courts below are required to be quashed and set aside for hearing the same afresh. Hence, the following order is passed.

6. All the orders passed in this matter by the Courts below are hereby quashed and set aside and matter is remanded back to the Court where the initial proceedings have started for proceeding further afresh after giving opportunities to all concerned. Parties are

directed to maintain status quo till final disposal of the above proceedings. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)

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